

WEBINAR

WEDNESDAYS



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"Ghost Guns" and Violent Crime: Effective Prosecution Strategies

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“Ghost Guns”: Fact Fiction and Prosecution

Reference Materials

The Constitution of the United States

Article I, Section 8: “The Congress shall have Power ... To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;”

Wickard v. Filburn 317 U.S. 111 (1942)

But even if activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as “direct” or “indirect”.

United States v. Lopez, 514 U.S. 549 (1995)

“Section 922(q) is a criminal statute that by its terms has nothing to do with “commerce” or any sort of economic enterprise, however broadly one might define those terms. . . . It cannot therefore be sustained under our cases upholding regulations of activities that arise out of or are connected with a commercial transaction, which viewed in the aggregate, substantially affects interstate commerce. “To uphold the Government’s contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the states.”

Gonzales v. Raich, 545 U.S. 1 (2005)

“At issue in Lopez, was the validity of the Gun Free School Zones Act of 1990, which was a brief, single-subject statute making it a crime for an individual to possess a gun in a school zone.

The Act did not regulate any economic activity and did not contain any requirement that the possession of a gun have any connection to past interstate activity or a predictable impact on future commercial.

Federal Legislation and Regulations

THE GUN CONTROL ACT OF 1968, PUBLIC LAW 90-618 TITLE 18, UNITED STATES
CODE, CHAPTER 44

An Act to amend title 18, United States Code, to provide for better control of the interstate traffic in firearms. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Gun Control Act of 1968".

TITLE I - STATE FIREARMS CONTROL ASSISTANCE PURPOSE Sec. 101.

The Congress hereby declares that the purpose of this title is to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence, and it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes, or provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title.

DEFINITION OF "FIREARM":

18 USC § 921(a)(3), (4). Any weapon (including a starter gun) which will expel a projectile by means of an explosive or is designed or may be readily converted to do so. This includes the frame or receiver of any such weapon, any firearm muffler or silencer or any destructive device. A "destructive device" includes any explosive, incendiary or poison gas --- (i) bomb; (ii) grenade or (iii) similar device, or any combination of parts designed or intended for use in converting any device into a destructive device, or from which a destructive device may be readily assembled. Does not include antique firearms.

18 United States Code, §922

(summary)

I. POSSESSION OR RECEIPT OF A FIREARM OR AMMUNITION BY A PROHIBITED PERSON:

18 USC § 922(g). Punishable by up to 10 years of imprisonment. Pursuant to 18 USC § 924(e), may receive minimum sentence of 15 years without parole if offender has 3 or more prior convictions for a felony crime of violence (e.g., burglary, arson, extortion, assault) and/or drug trafficking felony.

Elements

A. **Knowing possession or receipt** of a firearm or ammunition;

B. By a subject who falls within one of the following categories:

Felon - Prior conviction for offense that carries over 1 yr. (Certain exceptions listed in 18 USC § 921(a)(20) Additionally, persons awaiting trial on felony charges are prohibited from receiving firearms. See 18 USC § 922(n));

Drug user or addict - Inference of current use may be shown by evidence of recent use or possession or pattern of use or possession that reasonably covers the present time (e.g., positive drug test; conviction for use or possession within past year.);

Alien -Includes illegal aliens and non-immigrant aliens. This provision does not prohibit an alien with a “green card” from possessing guns or ammunition. NOTE: certain exceptions in 18 USC § 922(y);

Person adjudicated as mental defective or committed to mental institution;

Person subject to a domestic restraining order - The order must prohibit specific conduct against an intimate partner or a child of either the intimate partner or person subject to the order and must have been issued after a hearing of which the subject was notified and at which the subject had an opportunity to participate. The order must also find the subject poses a credible threat to the physical safety of the intimate partner or child described above or must prohibit the use, attempted use, or threatened use of physical force.;

Person with a prior misdemeanor conviction for domestic violence - The prior conviction must be for a crime which has as an element the use or attempted use of physical force or the threatened use of a deadly weapon. It must have been committed by someone in a specific domestic relationship with the victim (e.g., spouse or former spouse, partner, parent, or guardian). The subject must have been represented by counsel or waived that right and if entitled to a jury trial, had a jury trial or waived that right.;

Fugitive from justice -Fled any state to avoid being prosecuted or to avoid testifying in any criminal proceeding.; or

Person dishonorably discharged from the military;

C. **AND**, the firearm or ammunition was transported across a state line at any time. (Defendant need not have transported the firearm or known of its transportation across state lines.)

II. KNOWINGLY SELL, GIVE OR OTHERWISE DISPOSE OF ANY FIREARM OR AMMUNITION TO ANY PERSON WHO FALLS WITHIN ONE OF THE ABOVE CATEGORIES:

18 USC § 922(d). Punishable by up to 10 years imprisonment.

III. USE, CARRY OR POSSESS A FIREARM IN RELATION TO OR IN FURTHERANCE OF A FEDERAL DRUG FELONY OR A FEDERAL CRIME OF VIOLENCE:

18 USC § 924(c); 18 USC § 924(j). Punishment ranges from **at least 5 years** up to life imprisonment, without parole, or death if **death** results from use of firearm. Sentence of imprisonment must be served **consecutive** to any other sentence. Mandatory minimum sentence increases depending upon: **the type of firearm involved** (short-barreled rifle or shotgun; silencer, etc.); **whether it is a second or subsequent offense**; and **whether gun** was brandished **or discharged**.

IV. STOLEN FIREARM, AMMUNITION OR EXPLOSIVE:

A. **18 USC §§ 842(h); 922(i), & (j).** Punishable by up to 10 years imprisonment. May not knowingly transport or ship in interstate commerce or receive, possess, conceal, pledge or accept as security for a loan any **stolen firearm, ammunition or explosive** which has moved in interstate commerce.

B. **18 USC § 922(u).** Punishable by up to 5 years imprisonment. May not willfully steal or unlawfully take or carry away a firearm that has been shipped or transported in interstate commerce **from the person or premises of a firearms licensee**.

V. FIREARM IN A SCHOOL ZONE:

18 USC § 922(q)(2), (3). Misdemeanor offense punishable by up to 5 years imprisonment. Generally, may not **possess or discharge** a firearm (that has moved in interstate commerce) in a school zone.

VI. KNOWINGLY POSSESS OR MANUFACTURE CERTAIN FIREARMS:

Various offenses punishable by up to 5 or 10 years imprisonment, depending upon specific violation.

A. **26 USC § 5861.** Generally unlawful to make or possess **any unregistered machine gun** or any part designed or intended exclusively for use in converting a weapon into such weapon, **firearm silencer, sawed-off shotgun or rifle** which meet specific length criteria, **or destructive device** (as defined in 26 USC § 5845); see also **18 USC § 922(o)**: generally unlawful to possess or transfer machine guns made on or after May 19, 1986;

B. **18 USC § 922(v).** Generally unlawful to manufacture, transfer, or possess **semi-automatic assault weapon** manufactured after Sept. 13, 1994; OR

C. **18 USC § 922(k).** Generally unlawful to possess or receive any firearm that has moved in interstate commerce which **lacks a serial number** or contains an **altered or obliterated serial number**.

VII. SELL, DELIVER OR TRANSFER FIREARM OR AMMUNITION TO A JUVENILE:

A. **18 USC § 922(x)(1).** Punishable by up to 1 year imprisonment unless transferor had reason to believe juvenile would commit crime of violence with gun or ammunition, then up to 10 years imprisonment. May not sell, deliver or transfer a handgun or handgun-only ammunition to

a person who is under age 18;

B. 18 USC § 922(x)(2). A person under age 18 may not possess a handgun or handgun-only ammunition; (NOTE: Certain exceptions apply to A & B, such as where juvenile possesses written permission of a parent.);

C. 18 USC § 922(b). Punishable by up to 5 years of imprisonment. A **firearms licensee** may not sell any gun or ammunition to anyone under the age of 18 and may not sell a handgun or handgun ammunition to a **person under the age of 21.**

Code of Federal Regulations, 27 CFR Ch. II, Subch. B, Pt. 478 – Commerce in Firearms and Ammunition

Firearms Owners Protection Act of 1986

Arizona Revised Statutes, 54th Legislature, 2nd Regular Session

(Excerpts)

13-3101. Definitions

A. In this chapter, unless the context otherwise requires:

1. "Deadly weapon" means anything that is designed for lethal use. The term includes a firearm.
2. "Deface" means to remove, alter or destroy the manufacturer's serial number.
3. "Explosive" means any dynamite, nitroglycerine, black powder, or other similar explosive material, including plastic explosives. Explosive does not include ammunition or ammunition components such as primers, percussion caps, smokeless powder, black powder and black powder substitutes used for hand loading purposes.
4. "Firearm" means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun or other weapon that will expel, is designed to expel or may readily be converted to expel a projectile by the action of an explosive. Firearm does not include a firearm in permanently inoperable condition.
5. "Improvised explosive device" means a device that incorporates explosives or destructive, lethal, noxious, pyrotechnic or incendiary chemicals and that is designed to destroy, disfigure, terrify or harass.
6. "Occupied structure" means any building, object, vehicle, watercraft, aircraft or place with sides and a floor that is separately securable from any other structure attached to it, that is used

for lodging, business, transportation, recreation or storage and in which one or more human beings either are or are likely to be present or so near as to be in equivalent danger at the time the discharge of a firearm occurs. Occupied structure includes any dwelling house, whether occupied, unoccupied or vacant.

7. "Prohibited possessor" means any person:

(a) Who has been found to constitute a danger to self or to others or to have a persistent or acute disability or grave disability pursuant to court order pursuant to section 36-540, and whose right to possess a firearm has not been restored pursuant to section 13-925.

(b) Who has been convicted within or without this state of a felony or who has been adjudicated delinquent for a felony and whose civil right to possess or carry a firearm has not been restored.

(c) Who is at the time of possession serving a term of imprisonment in any correctional or detention facility.

(d) Who is at the time of possession serving a term of probation pursuant to a conviction for a domestic violence offense as defined in section 13-3601 or a felony offense, parole, community supervision, work furlough, home arrest or release on any other basis or who is serving a term of probation or parole pursuant to the interstate compact under title 31, chapter 3, article 4.1.

(e) Who is an undocumented alien or a nonimmigrant alien traveling with or without documentation in this state for business or pleasure or who is studying in this state and who maintains a foreign residence abroad. This subdivision does not apply to:

(i) Nonimmigrant aliens who possess a valid hunting license or permit that is lawfully issued by a state in the United States.

(ii) Nonimmigrant aliens who enter the United States to participate in a competitive target shooting event or to display firearms at a sports or hunting trade show that is sponsored by a national, state or local firearms trade organization devoted to the competitive use or other sporting use of firearms.

(iii) Certain diplomats.

(iv) Officials of foreign governments or distinguished foreign visitors who are designated by the United States department of state.

(v) Persons who have received a waiver from the United States attorney general.

(f) Who has been found incompetent pursuant to rule 11, Arizona rules of criminal procedure, and who subsequently has not been found competent.

(g) Who is found guilty except insane.

8. "Prohibited weapon":

(a) Includes the following:

(i) An item that is a bomb, grenade, rocket having a propellant charge of more than four ounces or mine and that is explosive, incendiary or poison gas.

(ii) A device that is designed, made or adapted to muffle the report of a firearm.

(iii) A firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger.

(iv) A rifle with a barrel length of less than sixteen inches, or shotgun with a barrel length of less than eighteen inches, or any firearm that is made from a rifle or shotgun and that, as modified, has an overall length of less than twenty-six inches.

(v) A breakable container that contains a flammable liquid with a flash point of one hundred fifty degrees Fahrenheit or less and that has a wick or similar device capable of being ignited.

(vi) A chemical or combination of chemicals, compounds or materials, including dry ice, that is possessed or manufactured for the purpose of generating a gas to cause a mechanical failure, rupture or bursting or an explosion or detonation of the chemical or combination of chemicals, compounds or materials.

(vii) An improvised explosive device.

(viii) Any combination of parts or materials that is designed and intended for use in making or converting a device into an item set forth in item (i), (v) or (vii) of this subdivision.

(b) Does not include:

(i) Any fireworks that are imported, distributed or used in compliance with state laws or local ordinances.

(ii) Any propellant, propellant actuated devices or propellant actuated industrial tools that are manufactured, imported or distributed for their intended purposes.

(iii) A device that is commercially manufactured primarily for the purpose of illumination.

9. "Trafficking" means to sell, transfer, distribute, dispense or otherwise dispose of a weapon or explosive to another person, or to buy, receive, possess or obtain control of a weapon or explosive, with the intent to sell, transfer, distribute, dispense or otherwise dispose of the weapon or explosive to another person.

B. The items set forth in subsection A, paragraph 8, subdivision (a), items (i), (ii), (iii) and (iv) of this section do not include any firearms or devices that are possessed, manufactured or transferred in compliance with federal law.

Regulating Conduct

13-3102. Misconduct involving weapons; defenses; classification; definitions

A. A person commits misconduct involving weapons by knowingly:

1. Carrying a deadly weapon except a pocket knife concealed on his person or within his immediate control in or on a means of transportation:

(a) In the furtherance of a serious offense as defined in section 13-706, a violent crime as defined in section 13-901.03 or any other felony offense; or

(b) When contacted by a law enforcement officer and failing to accurately answer the officer if the officer asks whether the person is carrying a concealed deadly weapon; or

2. Carrying a deadly weapon except a pocket knife concealed on his person or concealed within his immediate control in or on a means of transportation if the person is under twenty-one years of age; or

3. Manufacturing, possessing, transporting, selling or transferring a prohibited weapon, except that if the violation involves dry ice, a person commits misconduct involving weapons by knowingly possessing the dry ice with the intent to cause injury to or death of another person or to cause damage to the property of another person; or

4. Possessing a deadly weapon or prohibited weapon if such person is a prohibited possessor; or

5. Selling or transferring a deadly weapon to a prohibited possessor; or

6. Defacing a deadly weapon; or

7. Possessing a defaced deadly weapon knowing the deadly weapon was defaced; or

8. Using or possessing a deadly weapon during the commission of any felony offense included in chapter 34 of this title; or

9. Discharging a firearm at an occupied structure in order to assist, promote or further the interests of a criminal street gang, a criminal syndicate or a racketeering enterprise; or

10. Unless specifically authorized by law, entering any public establishment or attending any public event and carrying a deadly weapon on his person after a reasonable request by the

operator of the establishment or the sponsor of the event or the sponsor's agent to remove his weapon and place it in the custody of the operator of the establishment or the sponsor of the event for temporary and secure storage of the weapon pursuant to section 13-3102.01; or

11. Unless specifically authorized by law, entering an election polling place on the day of any election carrying a deadly weapon; or

12. Possessing a deadly weapon on school grounds; or

13. Unless specifically authorized by law, entering a nuclear or hydroelectric generating station carrying a deadly weapon on his person or within the immediate control of any person; or

14. Supplying, selling or giving possession or control of a firearm to another person if the person knows or has reason to know that the other person would use the firearm in the commission of any felony; or

15. Using, possessing or exercising control over a deadly weapon in furtherance of any act of terrorism as defined in section 13-2301 or possessing or exercising control over a deadly weapon knowing or having reason to know that it will be used to facilitate any act of terrorism as defined in section 13-2301; or

16. Trafficking in weapons or explosives for financial gain in order to assist, promote or further the interests of a criminal street gang, a criminal syndicate or a racketeering enterprise.

B. Subsection A, paragraph 2 of this section shall not apply to:

1. A person in his dwelling, on his business premises or on real property owned or leased by that person or that person's parent, grandparent or legal guardian.

2. A member of the sheriff's volunteer posse or reserve organization who has received and passed firearms training that is approved by the Arizona peace officer standards and training board and who is authorized by the sheriff to carry a concealed weapon pursuant to section 11-441.

3. A firearm that is carried in:

(a) A manner where any portion of the firearm or holster in which the firearm is carried is visible.

(b) A holster that is wholly or partially visible.

(c) A scabbard or case designed for carrying weapons that is wholly or partially visible.

(d) Luggage.

(e) A case, holster, scabbard, pack or luggage that is carried within a means of transportation or within a storage compartment, map pocket, trunk or glove compartment of a means of transportation.

C. Subsection A, paragraphs 2, 3, 7, 10, 11, 12 and 13 of this section shall not apply to:

1. A peace officer or any person summoned by any peace officer to assist and while actually assisting in the performance of official duties; or
2. A member of the military forces of the United States or of any state of the United States in the performance of official duties; or
3. A warden, deputy warden, community correctional officer, detention officer, special investigator or correctional officer of the state department of corrections or the department of juvenile corrections; or
4. A person specifically licensed, authorized or permitted pursuant to a statute of this state or of the United States.

D. Subsection A, paragraph 10 of this section does not apply to an elected or appointed judicial officer in the court facility where the judicial officer works if the judicial officer has demonstrated competence with a firearm as prescribed in section 13-3112, subsection N, except that the judicial officer shall comply with any rule or policy adopted by the presiding judge of the superior court while in the court facility. For the purposes of this subsection, appointed judicial officer does not include a hearing officer or a judicial officer pro tempore who is not a full-time officer.

E. Subsection A, paragraphs 3 and 7 of this section shall not apply to:

1. The possessing, transporting, selling or transferring of weapons by a museum as a part of its collection or an educational institution for educational purposes or by an authorized employee of such museum or institution, if:
 - (a) Such museum or institution is operated by the United States or this state or a political subdivision of this state, or by an organization described in 26 United States Code section 170(c) as a recipient of a charitable contribution; and
 - (b) Reasonable precautions are taken with respect to theft or misuse of such material.
2. The regular and lawful transporting as merchandise; or
3. Acquisition by a person by operation of law such as by gift, devise or descent or in a fiduciary capacity as a recipient of the property or former property of an insolvent, incapacitated or deceased person.

F. Subsection A, paragraph 3 of this section shall not apply to the merchandise of an authorized manufacturer of or dealer in prohibited weapons, when such material is intended to be manufactured, possessed, transported, sold or transferred solely for or to a dealer, a regularly constituted or appointed state, county or municipal police department or police officer, a detention facility, the military service of this or another state or the United States, a museum or educational institution or a person specifically licensed or permitted pursuant to federal or state law.

G. Subsection A, paragraph 10 of this section shall not apply to shooting ranges or shooting events, hunting areas or similar locations or activities.

H. Subsection A, paragraph 12 of this section shall not apply to a weapon if such weapon is possessed for the purposes of preparing for, conducting or participating in hunter or firearm safety courses.

I. Subsection A, paragraph 12 of this section shall not apply to the possession of a:

1. Firearm that is not loaded and that is carried within a means of transportation under the control of an adult provided that if the adult leaves the means of transportation the firearm shall not be visible from the outside of the means of transportation and the means of transportation shall be locked.

2. Firearm for use on the school grounds in a program approved by a school.

3. Firearm by a person who possesses a certificate of firearms proficiency pursuant to section 13-3112, subsection T and who is authorized to carry a concealed firearm pursuant to the law enforcement officers safety act of 2004 (P.L. 108-277; 118 Stat. 865; 18 United States Code sections 926B and 926C).

J. Subsection A, paragraphs 2, 3, 7 and 13 of this section shall not apply to commercial nuclear generating station armed nuclear security guards during the performance of official duties or during any security training exercises sponsored by the commercial nuclear generating station or local, state or federal authorities.

K. The operator of the establishment or the sponsor of the event or the employee of the operator or sponsor or the agent of the sponsor, including a public entity or public employee, is not liable for acts or omissions pursuant to subsection A, paragraph 10 of this section unless the operator, sponsor, employee or agent intended to cause injury or was grossly negligent.

L. If a law enforcement officer contacts a person who is in possession of a firearm, the law enforcement officer may take temporary custody of the firearm for the duration of that contact.

M. Misconduct involving weapons under subsection A, paragraph 15 of this section is a class 2 felony. Misconduct involving weapons under subsection A, paragraph 9, 14 or 16 of this section is a class 3 felony. Misconduct involving weapons under subsection A, paragraph 3, 4, 8 or 13 of this section is a class 4 felony. Misconduct involving weapons under subsection A, paragraph 12

of this section is a class 1 misdemeanor unless the violation occurs in connection with conduct that violates section 13-2308, subsection A, paragraph 5, section 13-2312, subsection C, section 13-3409 or section 13-3411, in which case the offense is a class 6 felony. Misconduct involving weapons under subsection A, paragraph 1, subdivision (a) of this section or subsection A, paragraph 5, 6 or 7 of this section is a class 6 felony. Misconduct involving weapons under subsection A, paragraph 1, subdivision (b) of this section or subsection A, paragraph 10 or 11 of this section is a class 1 misdemeanor. Misconduct involving weapons under subsection A, paragraph 2 of this section is a class 3 misdemeanor.

N. For the purposes of this section:

1. "Contacted by a law enforcement officer" means a lawful traffic or criminal investigation, arrest or detention or an investigatory stop by a law enforcement officer that is based on reasonable suspicion that an offense has been or is about to be committed.
2. "Public establishment" means a structure, vehicle or craft that is owned, leased or operated by this state or a political subdivision of this state.
3. "Public event" means a specifically named or sponsored event of limited duration that is either conducted by a public entity or conducted by a private entity with a permit or license granted by a public entity. Public event does not include an unsponsored gathering of people in a public place.
4. "School" means a public or nonpublic kindergarten program, common school or high school.
5. "School grounds" means in, or on the grounds of, a school.

13-3107. Unlawful discharge of firearms; exceptions; classification; definitions

A. A person who with criminal negligence discharges a firearm within or into the limits of any municipality is guilty of a class 6 felony.

B. Notwithstanding the fact that the offense involves the discharge of a deadly weapon, unless a dangerous offense is alleged and proven pursuant to section 13-704, subsection L, section 13-604 applies to this offense.

C. This section does not apply if the firearm is discharged:

1. As allowed pursuant to chapter 4 of this title.
2. On a properly supervised range.
3. To lawfully take wildlife during an open season established by the Arizona game and fish commission and subject to the limitations prescribed by title 17 and Arizona game and fish

commission rules and orders. This paragraph does not prevent a city, town or county from adopting an ordinance or rule restricting the discharge of a firearm within one-fourth mile of an occupied structure without the consent of the owner or occupant of the structure. For the purposes of this paragraph:

(a) "Occupied structure" means any building in which, at the time of the firearm's discharge, a reasonable person from the location where a firearm is discharged would expect a person to be present.

(b) "Take" has the same meaning prescribed in section 17-101.

4. For the control of nuisance wildlife by permit from the Arizona game and fish department or the United States fish and wildlife service.

5. By special permit of the chief of police of the municipality.

6. As required by an animal control officer in the performance of duties as specified in section 9-499.04.

7. Using blanks.

8. More than one mile from any occupied structure as defined in section 13-3101.

9. In self-defense or defense of another person against an animal attack if a reasonable person would believe that deadly physical force against the animal is immediately necessary and reasonable under the circumstances to protect oneself or the other person.

D. For the purposes of this section:

1. "Municipality" means any city or town and includes any property that is fully enclosed within the city or town.

2. "Properly supervised range" means a range that is any of the following:

(a) Operated by a club affiliated with the national rifle association of America, the amateur trapshooting association, the national skeet association or any other nationally recognized shooting organization, or by any public or private school.

(b) Approved by any agency of the federal government, this state or a county or city within which the range is located.

(c) Operated with adult supervision for shooting air or carbon dioxide gas operated guns, or for shooting in underground ranges on private or public property.

Regulating who can possess- Minors

13-3111. Minors prohibited from carrying or possessing firearms; exceptions; seizure and forfeiture; penalties; classification

A. Except as provided in subsection B, an unemancipated person who is under eighteen years of age and who is unaccompanied by a parent, grandparent or guardian, or a certified hunter safety instructor or certified firearms safety instructor acting with the consent of the unemancipated person's parent or guardian, shall not knowingly carry or possess on his person, within his immediate control, or in or on a means of transportation a firearm in any place that is open to the public or on any street or highway or on any private property except private property owned or leased by the minor or the minor's parent, grandparent or guardian.

B. This section does not apply to a person who is fourteen, fifteen, sixteen or seventeen years of age and who is any of the following:

1. Engaged in lawful hunting or shooting events or marksmanship practice at established ranges or other areas where the discharge of a firearm is not prohibited.
2. Engaged in lawful transportation of an unloaded firearm for the purpose of lawful hunting.
3. Engaged in lawful transportation of an unloaded firearm between the hours of 5:00 a.m. and 10:00 p.m. for the purpose of shooting events or marksmanship practice at established ranges or other areas where the discharge of a firearm is not prohibited.
4. Engaged in activities requiring the use of a firearm that are related to the production of crops, livestock, poultry, livestock products, poultry products, or ratites or in the production or storage of agricultural commodities.

C. If the minor is not exempt under subsection B and is in possession of a firearm, a peace officer shall seize the firearm at the time the violation occurs.

D. In addition to any other penalty provided by law, a person who violates subsection A shall be subject to the following penalties:

1. If adjudicated a delinquent juvenile for an offense involving an unloaded firearm, a fine of not more than two hundred fifty dollars, and the court may order the suspension or revocation of the person's driver license until the person reaches eighteen years of age. If the person does not have a driver license at the time of the adjudication, the court may direct that the department of transportation not issue a driver license to the person until the person reaches eighteen years of age.
2. If adjudicated a delinquent juvenile for an offense involving a loaded firearm, a fine of not more than five hundred dollars, and the court may order the suspension or revocation of the person's driver license until the person reaches eighteen years of age. If the person does not have a driver license at the time of the adjudication, the court may direct that the department of

transportation not issue a driver license to the person until the person reaches eighteen years of age.

3. If adjudicated a delinquent juvenile for an offense involving a loaded or unloaded firearm, if the person possessed the firearm while the person was the driver or an occupant of a motor vehicle, a fine of not more than five hundred dollars and the court shall order the suspension or revocation of the person's driver license until the person reaches eighteen years of age. If the person does not have a driver license at the time of adjudication, the court shall direct that the department of transportation not issue a driver license to the person until the person reaches eighteen years of age. If the court finds that no other means of transportation is available, the driving privileges of the child may be restricted to travel between the child's home, school and place of employment during specified periods of time according to the child's school and employment schedule.

E. Firearms seized pursuant to subsection C shall be held by the law enforcement agency responsible for the seizure until the charges have been adjudicated or disposed of otherwise or the person is convicted. Upon adjudication or conviction of a person for a violation of this section, the court shall order the firearm forfeited. However, the law enforcement agency shall return the firearm to the lawful owner if the identity of that person is known.

F. If the court finds that the parent or guardian of a minor found responsible for violating this section knew or reasonably should have known of the minor's unlawful conduct and made no effort to prohibit it, the parent or guardian is jointly and severally responsible for any fine imposed pursuant to this section or for any civil actual damages resulting from the unlawful use of the firearm by the minor.

G. This section is supplemental to any other law imposing a criminal penalty for the use or exhibition of a deadly weapon. A minor who violates this section may be prosecuted and adjudicated delinquent for any other criminal conduct involving the use or exhibition of the deadly weapon.

H. A person who violates subsection A is guilty of a class 6 felony.

13-3113. Adjudicated delinquents; firearm possession; classification

A person who was previously adjudicated delinquent for an offense that would be a felony if committed by an adult and who possesses, uses or carries a firearm within ten years from the date of his adjudication or his release or escape from custody is guilty of a class 5 felony for a first offense and a class 4 felony for a second or subsequent offense if the person was previously adjudicated for an offense that if committed as an adult would constitute:

1. Burglary in the first degree.
2. Burglary in the second degree.

3. Arson.
4. Any felony offense involving the use or threatening exhibition of a deadly weapon or dangerous instrument.
5. A serious offense as defined in section 13-706.

Guns and the Commerce Clause: the Arizona Perspective

13-3108. Firearms regulated by state; state preemption; injunction; civil penalty; cause of action; violation; classification; definition

- A. Except as provided in subsection G of this section, a political subdivision of this state shall not enact any ordinance, rule or tax relating to the transportation, possession, carrying, sale, transfer, purchase, acquisition, gift, devise, storage, licensing, registration, discharge or use of firearms or ammunition or any firearm or ammunition components or related accessories in this state.
- B. A political subdivision of this state shall not require the licensing or registration of firearms or ammunition or any firearm or ammunition components or related accessories or prohibit the ownership, purchase, sale or transfer of firearms or ammunition or any firearm or ammunition components, or related accessories.
- C. A political subdivision of this state shall not require or maintain a record in any form, whether permanent or temporary, including a list, log or database, of any of the following:
1. Any identifying information of a person who leaves a weapon in temporary storage at any public establishment or public event, except that the operator of the establishment or the sponsor of the event may require that a person provide a government issued identification or a reasonable copy of a government issued identification for the purpose of establishing ownership of the weapon. The operator or sponsor shall store any provided identification with the weapon and shall return the identification to the person when the weapon is retrieved. The operator or sponsor shall not retain records or copies of any identification provided pursuant to this paragraph after the weapon is retrieved.
 2. Except in the course of a law enforcement investigation, any identifying information of a person who owns, possesses, purchases, sells or transfers a firearm.
 3. The description, including the serial number, of a weapon that is left in temporary storage at any public establishment or public event.
- D. A political subdivision of this state shall not enact any rule or ordinance that relates to firearms and is more prohibitive than or that has a penalty that is greater than any state law penalty. A political subdivision's rule or ordinance that relates to firearms and that is inconsistent

with or more restrictive than state law, whether enacted before or after July 29, 2010, is null and void.

E. A political subdivision of this state shall not enact any ordinance, rule or regulation limiting the lawful taking of wildlife during an open season established by the Arizona game and fish commission unless the ordinance, rule or regulation is consistent with title 17 and rules and orders adopted by the Arizona game and fish commission. This subsection does not prevent a political subdivision from adopting an ordinance or rule restricting the discharge of a firearm within one-fourth mile of an occupied structure without the consent of the owner or occupant of the structure. For the purposes of this subsection:

1. "Occupied structure" means any building in which, at the time of the firearm's discharge, a reasonable person from the location where a firearm is discharged would expect a person to be present.

2. "Take" has the same meaning prescribed in section 17-101.

F. This state, any agency or political subdivision of this state and any law enforcement agency in this state shall not facilitate the destruction of a firearm or purchase or otherwise acquire a firearm for the purpose of destroying the firearm except as authorized by section 13-3105 or 17-240.

G. This section does not prohibit a political subdivision of this state from enacting and enforcing any ordinance or rule pursuant to state law or relating to any of the following:

1. Imposing any privilege or use tax on the retail sale, lease or rental of, or the gross proceeds or gross income from the sale, lease or rental of, firearms or ammunition or any firearm or ammunition components at a rate that applies generally to other items of tangible personal property.

2. Prohibiting a minor who is unaccompanied by a parent, grandparent or guardian or a certified hunter safety instructor or certified firearms safety instructor acting with the consent of the minor's parent, grandparent or guardian from knowingly possessing or carrying on the minor's person, within the minor's immediate control or in or on a means of transportation a firearm in any place that is open to the public or on any street or highway or on any private property except private property that is owned or leased by the minor or the minor's parent, grandparent or guardian. Any ordinance or rule that is adopted pursuant to this paragraph shall not apply to a minor who is fourteen, fifteen, sixteen or seventeen years of age and who is engaged in any of the following:

- (a) Lawful hunting or shooting events or marksmanship practice at established ranges or other areas where the discharge of a firearm is not prohibited.

- (b) Lawful transportation of an unloaded firearm for the purpose of lawful hunting.

(c) Lawful transportation of an unloaded firearm for the purpose of attending shooting events or marksmanship practice at established ranges or other areas where the discharge of a firearm is not prohibited.

(d) Any activity that is related to the production of crops, livestock, poultry, livestock products, poultry products or ratites or storage of agricultural commodities.

3. The regulation of commercial land and structures, including a business relating to firearms or ammunition or their components or a commercial shooting range in the same manner as other commercial businesses. Notwithstanding any other law, this paragraph does not:

(a) Authorize a political subdivision to regulate the sale or transfer of firearms on property it owns, leases, operates or controls in a manner that is different than or inconsistent with state law. For the purposes of this subdivision, a use permit or other contract that provides for the use of property owned, leased, operated or controlled by a political subdivision shall not be considered a sale, conveyance or disposition of property.

(b) Authorize a political subdivision through a zoning ordinance to prohibit or otherwise regulate the otherwise lawful discharge of a firearm or maintenance or improvements directly related to the discharge on a private lot or parcel of land that is not open to the public on a commercial or membership basis.

(c) Authorize a political subdivision to regulate the otherwise lawful discharge of a firearm or maintenance or improvements directly related to the discharge on land that is used for agriculture or other noncommercial purposes.

4. Regulating employees or independent contractors of the political subdivision who are acting within the course and scope of their employment or contract. For the purposes of this paragraph, acting within the course and scope of their employment or contract does not include the lawful possession, carrying, transporting or storing of a firearm or other weapon:

(a) On real property that is owned by the employee or independent contractor.

(b) In or on a private vehicle or craft that is owned or operated by the employee or independent contractor unless the ordinance or rule violates another applicable federal or state law or regulation.

(c) Pursuant to section 12-781.

5. Limiting or prohibiting the discharge of firearms in parks and preserves except:

(a) As allowed pursuant to chapter 4 of this title.

(b) On a properly supervised range as defined in section 13-3107.

(c) In an area approved as a hunting area by the Arizona game and fish department. Any such area may be closed when deemed unsafe by the director of the Arizona game and fish department.

(d) To control nuisance wildlife by permit from the Arizona game and fish department or the United States fish and wildlife service.

(e) By special permit of the chief law enforcement officer of the political subdivision.

(f) As required by an animal control officer in performing duties specified in section 9-499.04 and title 11, chapter 7, article 6.

(g) In self-defense or defense of another person against an animal attack if a reasonable person would believe that deadly physical force against the animal is immediately necessary and reasonable under the circumstances to protect oneself or the other person.

H. Any ordinance, regulation, tax or rule that is enacted by a political subdivision in violation of this section is invalid and subject to a permanent injunction against the political subdivision from enforcing the ordinance, regulation, tax or rule. It is not a defense that the political subdivision was acting in good faith or on the advice of counsel.

I. If a court determines that a political subdivision has knowingly and wilfully violated this section, the court may assess a civil penalty of up to fifty thousand dollars against the political subdivision.

J. If a court determines that a person has knowingly and wilfully violated this section while acting in the person's official capacity through enactment of any ordinance, regulation, tax, measure, directive, rule, enactment, order or policy, the person may be subject to termination from employment to the extent allowable under state law.

K. A person or an organization whose membership is adversely affected by any ordinance, regulation, tax, measure, directive, rule, enactment, order or policy that is in violation of this section may file a civil action for declaratory and injunctive relief and actual damages against the political subdivision in any court of this state having jurisdiction over any defendant in the action. If the plaintiff prevails in the action, the court shall award both:

1. Reasonable attorney fees and costs.

2. The actual damages incurred not to exceed one hundred thousand dollars.

L. A violation of any ordinance established pursuant to subsection G, paragraph 5 of this section is a class 2 misdemeanor unless the political subdivision designates a lesser classification by ordinance.

M. For the purposes of this section, "political subdivision" includes a political subdivision acting in any capacity, including under police power, in a proprietary capacity or otherwise.

13-3115. Forensics firearms identification system

The department of public safety is authorized to establish and maintain a forensics firearms identification system designed to provide investigative information on criminal street gangs and the unlawful use of firearms.

13-3106. Firearm purchase in other states

A person residing in this state, or a corporation or other business entity maintaining a place of business in this state, may purchase or otherwise obtain firearms anywhere in the United States if such purchase or acquisition fully complies with the laws of this state and the state in which the purchase or acquisition is made and the purchaser and seller, prior to the sale or delivery for sale, have complied with all the requirements of the federal gun control act of 1968, Public Law 90-618, section 922, subsection (c) and the Code of Federal Regulations, volume 26, section 178.96, subsection (c)

13-3114. Arizona manufactured firearms; regulation; definitions

A. Beginning October 1, 2010, a personal firearm, a firearm accessory or ammunition that is manufactured commercially or privately in this state and that remains within the borders of this state is not subject to federal law or federal regulation, including registration, under the authority of Congress to regulate interstate commerce and is not considered to have traveled in interstate commerce.

B. This section applies to a firearm, a firearm accessory or ammunition that is manufactured in this state from basic materials and that can be manufactured without the inclusion of any significant parts imported from another state.

C. The importation into this state of a firearm accessory, any generic or insignificant part that has other manufacturing or consumer product applications or any basic materials, including unmachined steel and unshaped wood that is incorporated into, attached to or used in conjunction with a firearm, firearm accessory or ammunition manufactured in this state, does not subject the firearm, firearm accessory or ammunition to federal regulation.

D. This section does not apply to:

1. A firearm that cannot be carried and used by one person.

2. A firearm that has a bore diameter of more than one and one-half inches and that uses smokeless powder as a propellant.
 3. Ammunition with a projectile that explodes using an explosion of chemical energy after the projectile leaves the firearm.
 4. A firearm that discharges two or more projectiles with one activation of the trigger or other firing device.
- E. A firearm that is manufactured and sold in this state pursuant to this section shall have the words "made in Arizona" clearly stamped on a central metallic part such as the receiver or frame.
- F. For the purposes of this section:
1. "Firearm accessory" means an item that is used in conjunction with or mounted on a firearm but that is not essential to the basic function of a firearm, including telescopic or laser sights, magazines, flash suppressors, folding or aftermarket stocks and grips, speedloaders, ammunition carriers and lights for target illumination.
 2. "Generic or insignificant part" includes springs, screws, nuts and pins.
 3. "Manufactured" means that a firearm, a firearm accessory or ammunition has been created from basic materials for functional usefulness, including forging, casting, machining or other processes for working materials.

AZ Title 44 –Trade and Commerce,
Chapter 36- Private Firearms Transactions,
Article 1- General Provisions

44-7851. Definitions

In this chapter, unless the context otherwise requires:

1. "Firearm" means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun or other weapon that will expel or that is designed to or may readily be converted to expel a solid projectile by the action of expanding gases.

2. "Private party" means a person who is not a prohibited possessor under state or federal law and does not include a person who possesses a federal firearms license and who primarily engages in the business of selling, trading or purchasing firearms.

3. "Transfer" means when a person gives, loans, offers for sale, wills or in any manner offers another person a firearm for any lawful purpose and the person is not a prohibited possessor under state or federal law.

44-7852. Private party firearms transfer; state or political subdivision encumbrance prohibited

This state or any political subdivision of this state may not enact or implement any additional fee, tax, assessment, lien or other encumbrance on the transfer of a firearm between two private parties who are not prohibited possessors under state or federal law.

Concealed Weapons

13-3112. Concealed weapons; qualification; application; permit to carry; civil penalty; report; applicability

A. The department of public safety shall issue a permit to carry a concealed weapon to a person who is qualified under this section. The person shall carry the permit at all times when the person is in actual possession of the concealed weapon and is required by section 4-229 or 4-244 to carry the permit. If the person is in actual possession of the concealed weapon and is required by section 4-229 or 4-244 to carry the permit, the person shall present the permit for inspection to any law enforcement officer on request.

B. The permit of a person who is arrested or indicted for an offense that would make the person unqualified under section 13-3101, subsection A, paragraph 7 or this section shall be immediately suspended and seized. The permit of a person who becomes unqualified on conviction of that offense shall be revoked. The permit shall be restored on presentation of documentation from the court if the permittee is found not guilty or the charges are dismissed. The permit shall be restored on presentation of documentation from the county attorney that the charges against the permittee were dropped or dismissed.

C. A permittee who carries a concealed weapon, who is required by section 4-229 or 4-244 to carry a permit and who fails to present the permit for inspection on the request of a law enforcement officer commits a violation of this subsection and is subject to a civil penalty of not more than three hundred dollars. The department of public safety shall be notified of all violations of this subsection and shall immediately suspend the permit. A permittee shall not be convicted of a violation of this subsection if the permittee produces to the court a legible permit that is issued to the permittee and that was valid at the time the permittee failed to present the permit for inspection.

D. A law enforcement officer shall not confiscate or forfeit a weapon that is otherwise lawfully possessed by a permittee whose permit is suspended pursuant to subsection C of this section, except that a law enforcement officer may take temporary custody of a firearm during an investigatory stop of the permittee.

E. The department of public safety shall issue a permit to an applicant who meets all of the following conditions:

1. Is a resident of this state or a United States citizen.
2. Is twenty-one years of age or older or is at least nineteen years of age and provides evidence of current military service or proof of honorable discharge or general discharge under honorable conditions from the United States armed forces, the United States armed forces reserve or a state national guard.
3. Is not under indictment for and has not been convicted in any jurisdiction of a felony unless that conviction has been expunged, set aside or vacated or the applicant's rights have been restored and the applicant is currently not a prohibited possessor under state or federal law.
4. Does not suffer from mental illness and has not been adjudicated mentally incompetent or committed to a mental institution.
5. Is not unlawfully present in the United States.
6. Has ever demonstrated competence with a firearm as prescribed by subsection N of this section and provides adequate documentation that the person has satisfactorily completed a training program or demonstrated competence with a firearm in any state or political subdivision in the United States. For the purposes of this paragraph, "adequate documentation" means:
 - (a) A current or expired permit issued by the department of public safety pursuant to this section.
 - (b) An original or copy of a certificate, card or document that shows the applicant has ever completed any course or class prescribed by subsection N of this section or an affidavit from the instructor, school, club or organization that conducted or taught the course or class attesting to the applicant's completion of the course or class.
 - (c) An original or a copy of a United States department of defense form 214 (DD-214) indicating an honorable discharge or general discharge under honorable conditions, a certificate of completion of basic training or any other document demonstrating proof of the applicant's current or former service in the United States armed forces as prescribed by subsection N, paragraph 5 of this section.
 - (d) An original or a copy of a concealed weapon, firearm or handgun permit or a license as prescribed by subsection N, paragraph 6 of this section.

F. The application shall be completed on a form prescribed by the department of public safety. The form shall not require the applicant to disclose the type of firearm for which a permit is sought. The applicant shall attest under penalty of perjury that all of the statements made by the applicant are true, that the applicant has been furnished a copy of this chapter and chapter 4 of this title and that the applicant is knowledgeable about the provisions contained in those chapters. The applicant shall submit the application to the department with any documentation prescribed by subsection E of this section, two sets of fingerprints and a reasonable fee determined by the director of the department.

G. On receipt of a concealed weapon permit application, the department of public safety shall conduct a check of the applicant's criminal history record pursuant to section 41-1750. The department of public safety may exchange fingerprint card information with the federal bureau of investigation for federal criminal history record checks.

H. The department of public safety shall complete all of the required qualification checks within sixty days after receipt of the application and shall issue a permit within fifteen working days after completing the qualification checks if the applicant meets all of the conditions specified in subsection E of this section. If a permit is denied, the department of public safety shall notify the applicant in writing within fifteen working days after the completion of all of the required qualification checks and shall state the reasons why the application was denied. On receipt of the notification of the denial, the applicant has twenty days to submit any additional documentation to the department. On receipt of the additional documentation, the department shall reconsider its decision and inform the applicant within twenty days of the result of the reconsideration. If denied, the applicant shall be informed that the applicant may request a hearing pursuant to title 41, chapter 6, article 10. For the purposes of this subsection, "receipt of the application" means the first day that the department has physical control of the application and that is presumed to be on the date of delivery as evidenced by proof of delivery by the United States postal service or a written receipt, which shall be provided by the department on request of the applicant.

I. On issuance, a permit is valid for five years, except a permit that is held by a member of the United States armed forces, including a member of the Arizona national guard or a member of the reserves of any military establishment of the United States, who is on federal active duty and who is deployed overseas shall be extended until ninety days after the end of the member's overseas deployment.

J. The department of public safety shall maintain a computerized permit record system that is accessible to criminal justice agencies for the purpose of confirming the permit status of any person who is contacted by a law enforcement officer and who claims to hold a valid permit issued by this state. This information and any other records that are maintained regarding applicants, permit holders or instructors shall not be available to any other person or entity except on an order from a state or federal court. A criminal justice agency shall not use the computerized permit record system to conduct inquiries on whether a person is a concealed weapons permit holder unless the criminal justice agency has reasonable suspicion to believe the person is carrying a concealed weapon and the person is subject to a lawful criminal investigation, arrest, detention or an investigatory stop.

K. A permit issued pursuant to this section is renewable every five years. Before a permit may be renewed, a criminal history records check shall be conducted pursuant to section 41-1750 within sixty days after receipt of the application for renewal. For the purposes of permit renewal, the permit holder is not required to submit additional fingerprints.

L. Applications for renewal shall be accompanied by a fee determined by the director of the department of public safety.

M. The department of public safety shall suspend or revoke a permit issued under this section if the permit holder becomes ineligible pursuant to subsection E of this section. The department of public safety shall notify the permit holder in writing within fifteen working days after the revocation or suspension and shall state the reasons for the revocation or suspension.

N. An applicant shall demonstrate competence with a firearm through any of the following:

1. Completion of any firearms safety or training course or class that is available to the general public, that is offered by a law enforcement agency, a junior college, a college or a private or public institution, academy, organization or firearms training school and that is approved by the department of public safety or that uses instructors who are certified by the national rifle association.

2. Completion of any hunter education or hunter safety course approved by the Arizona game and fish department or a similar agency of another state.

3. Completion of any national rifle association firearms safety or training course.

4. Completion of any law enforcement firearms safety or training course or class that is offered for security guards, investigators, special deputies or other divisions or subdivisions of law enforcement or security enforcement and that is approved by the department of public safety.

5. Evidence of current military service or proof of honorable discharge or general discharge under honorable conditions from the United States armed forces.

6. A valid current or expired concealed weapon, firearm or handgun permit or license that is issued by another state or a political subdivision of another state and that has a training or testing requirement for initial issuance.

7. Completion of any governmental police agency firearms training course and qualification to carry a firearm in the course of normal police duties.

8. Completion of any other firearms safety or training course or class that is conducted by a department of public safety approved or national rifle association certified firearms instructor.

O. The department of public safety shall maintain information comparing the number of permits requested, the number of permits issued and the number of permits denied. The department shall annually report this information electronically to the governor and the legislature.

P. The director of the department of public safety shall adopt rules for the purpose of implementing and administering this section including fees relating to permits that are issued pursuant to this section.

Q. This state and any political subdivision of this state shall recognize a concealed weapon, firearm or handgun permit or license that is issued by another state or a political subdivision of another state if both:

1. The permit or license is recognized as valid in the issuing state.

2. The permit or license holder is all of the following:

(a) Legally present in this state.

(b) Not legally prohibited from possessing a firearm in this state.

R. For the purpose of establishing mutual permit or license recognition with other states, the department of public safety shall enter into a written agreement if another state requires a written agreement. The department of public safety shall submit an electronic report to the governor and the legislature each year that includes any changes that were made in the previous year to a written agreement with another state.

S. Notwithstanding the provisions of this section, a person with a concealed weapons permit from another state may not carry a concealed weapon in this state if the person is under twenty-one years of age or is under indictment for, or has been convicted of, a felony offense in any jurisdiction, unless that conviction is expunged, set aside or vacated or the person's rights have been restored and the person is currently not a prohibited possessor under state or federal law.

T. The department of public safety may issue certificates of firearms proficiency according to the Arizona peace officer standards and training board firearms qualification for the purposes of implementing the law enforcement officers safety act of 2004 (P.L. 108-277; 118 Stat. 865; 18 United States Code sections 926B and 926C). A law enforcement or prosecutorial agency shall issue to a qualified retired law enforcement officer who has honorably retired a photographic identification that states that the officer has honorably retired from the agency. A person who was a municipal, county or state prosecutor is deemed to meet the qualifications of 18 United States Code section 926C(c)(2). The chief law enforcement officer shall determine whether an officer has honorably retired and the determination is not subject to review. A law enforcement or prosecutorial agency has no obligation to revoke, alter or modify the honorable discharge photographic identification based on conduct that the agency becomes aware of or that occurs after the officer has separated from the agency. For the purposes of this subsection, "qualified retired law enforcement officer" has the same meaning prescribed in 18 United States Code section 926C.

U. The initial and renewal application fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the concealed weapons permit fund established by section 41-1722.

13-3601. Domestic violence; definition; classification; sentencing option; arrest and procedure for violation; weapon seizure

A. "Domestic violence" means any act that is a dangerous crime against children as defined in section 13-705 or an offense prescribed in section 13-1102, 13-1103, 13-1104, 13-1105, 13-1201, 13-1202, 13-1203, 13-1204, 13-1302, 13-1303, 13-1304, 13-1406, 13-1425, 13-1502, 13-1503, 13-1504, 13-1602 or 13-2810, section 13-2904, subsection A, paragraph 1, 2, 3 or 6, section 13-2910, subsection A, paragraph 8 or 9, section 13-2915, subsection A, paragraph 3 or section 13-2916, 13-2921, 13-2921.01, 13-2923, 13-3019, 13-3601.02 or 13-3623, if any of the following applies:

1. The relationship between the victim and the defendant is one of marriage or former marriage or of persons residing or having resided in the same household.
2. The victim and the defendant have a child in common.
3. The victim or the defendant is pregnant by the other party.
4. The victim is related to the defendant or the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister or by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law.
5. The victim is a child who resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resides or who has resided in the same household as the defendant.
6. The relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship. The following factors may be considered in determining whether the relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship:
 - (a) The type of relationship.
 - (b) The length of the relationship.
 - (c) The frequency of the interaction between the victim and the defendant.
 - (d) If the relationship has terminated, the length of time since the termination.

B. A peace officer, with or without a warrant, may arrest a person if the officer has probable cause to believe that domestic violence has been committed and the officer has probable cause to believe that the person to be arrested has committed the offense, whether the offense is a felony or a misdemeanor and whether the offense was committed within or without the presence of the

peace officer. In cases of domestic violence involving the infliction of physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, the peace officer shall arrest a person who is at least fifteen years of age, with or without a warrant, if the officer has probable cause to believe that the offense has been committed and the officer has probable cause to believe that the person to be arrested has committed the offense, whether the offense was committed within or without the presence of the peace officer, unless the officer has reasonable grounds to believe that the circumstances at the time are such that the victim will be protected from further injury. Failure to make an arrest does not give rise to civil liability except pursuant to section 12-820.02. In order to arrest both parties, the peace officer shall have probable cause to believe that both parties independently have committed an act of domestic violence. An act of self-defense that is justified under chapter 4 of this title is not deemed to be an act of domestic violence. The release procedures available under section 13-3883, subsection A, paragraph 4 and section 13-3903 are not applicable to arrests made pursuant to this subsection.

C. A peace officer may question the persons who are present to determine if a firearm is present on the premises. On learning or observing that a firearm is present on the premises, the peace officer may temporarily seize the firearm if the firearm is in plain view or was found pursuant to a consent to search and if the officer reasonably believes that the firearm would expose the victim or another person in the household to a risk of serious bodily injury or death. A firearm that is owned or possessed by the victim shall not be seized unless there is probable cause to believe that both parties independently have committed an act of domestic violence.

D. If a firearm is seized pursuant to subsection C of this section, the peace officer shall give the owner or possessor of the firearm a receipt for each seized firearm. The receipt shall indicate the identification or serial number or other identifying characteristic of each seized firearm. Each seized firearm shall be held for at least seventy-two hours by the law enforcement agency that seized the firearm.

E. If a firearm is seized pursuant to subsection C of this section, the victim shall be notified by a peace officer before the firearm is released from temporary custody.

F. If there is reasonable cause to believe that returning a firearm to the owner or possessor may endanger the victim, the person who reported the assault or threat or another person in the household, the prosecutor shall file a notice of intent to retain the firearm in the appropriate superior, justice or municipal court. The prosecutor shall serve notice on the owner or possessor of the firearm by certified mail. The notice shall state that the firearm will be retained for not more than six months following the date of seizure. On receipt of the notice, the owner or possessor may request a hearing for the return of the firearm, to dispute the grounds for seizure or to request an earlier return date. The court shall hold the hearing within ten days after receiving the owner's or possessor's request for a hearing. At the hearing, unless the court determines that the return of the firearm may endanger the victim, the person who reported the assault or threat or another person in the household, the court shall order the return of the firearm to the owner or possessor.

G. A peace officer is not liable for any act or omission in the good faith exercise of the officer's duties under subsections C, D, E and F of this section.

H. Each indictment, information, complaint, summons or warrant that is issued and that involves domestic violence shall state that the offense involved domestic violence and shall be designated by the letters DV. A domestic violence charge shall not be dismissed or a domestic violence conviction shall not be set aside for failure to comply with this subsection.

I. A person who is arrested pursuant to subsection B of this section may be released from custody in accordance with the Arizona rules of criminal procedure or any other applicable statute. Any order for release, with or without an appearance bond, shall include pretrial release conditions that are necessary to provide for the protection of the alleged victim and other specifically designated persons and may provide for additional conditions that the court deems appropriate, including participation in any counseling programs available to the defendant.

J. When a peace officer responds to a call alleging that domestic violence has been or may be committed, the officer shall inform in writing any alleged or potential victim of the procedures and resources available for the protection of the victim including:

1. An order of protection pursuant to section 13-3602, an injunction pursuant to section 25-315 and an injunction against harassment pursuant to section 12-1809.
2. The emergency telephone number for the local police agency.
3. Telephone numbers for emergency services in the local community.
4. Websites for local resources related to domestic violence.

K. A peace officer is not civilly liable for noncompliance with subsection J of this section.

L. If a person is convicted of an offense involving domestic violence and the victim was pregnant at the time of the commission of the offense, at the time of sentencing the court shall take into consideration the fact that the victim was pregnant and may increase the sentence.

M. An offense that is included in domestic violence carries the classification prescribed in the section of this title in which the offense is classified. If the defendant committed a felony offense listed in subsection A of this section against a pregnant victim and knew that the victim was pregnant or if the defendant committed a felony offense causing physical injury to a pregnant victim and knew that the victim was pregnant, the maximum sentence otherwise authorized for that violation shall be increased by up to two years.

N. When a peace officer responds to a call alleging that domestic violence has been or may be committed, the officer shall determine if a minor is present. If a minor is present, the peace officer shall conduct a child welfare check to determine if the child is safe and if the child might be a victim of domestic violence or child abuse.

